In the High Court of Judicature at Madras

Dated: 14.12.2006

Coram

The Honourable Mr.JUSTICE P.D.DINAKARAN
and
The Honourable Mr.JUSTICE P.P.S.JANARTHANA RAJA

C.M.A.No.3788 of 2004

N.M.Subramaniam ... Appellant/Appellant

Vs.

Nagamani .... Respondent/Petitioner

Appeal filed under Section 19 of the Family Court Act against the Order and Decretal Order dated 31.3.2004 made in M.C.No.113 of 2001 on the file of The Judge, Family Court, Coimbatore.

For Appellant : Mr.Palani Selvaraj
For Respondent : No appearance

J U D G M E N T

(Judgment of the Court was delivered by P.D.DINAKARAN,J)

The appeal is directed against the order and decretal order dated 31.3.2004 passed in M.C.No.113 of 2001 on the file of the Family Court, Coimbatore, in the proceedings initiated under Section 125 Cr.P.C., ordering interim maintenance of Rs.500/- per month payable by the appellant-husband to the respondent-wife.

2. Even at the outset, we may say that the above appeal is not maintainable in law, since by the Family Court (Amendment) Act, 1991 (Central Act 59 of 1991), no appeal shall lie from an order passed under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974). For the purpose of convenience, it is apposite to refer Section 19(2) of the Family Courts Act, 1984, which reads as follows:-

> " 19. Appeal - (1) ...
> (2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

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Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any orders passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendments) Act, 1991."

(emphasis supplied)

3. Concededly, in the instant case, the appeal has been preferred after the amendment in Section 19(2) of the Family Courts Act, 1984, viz., or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), thereby barring an appeal against the order passed under Chapter IX of the Code of Criminal Procedure. Hence, we are of the considered opinion that the above appeal is not maintainable in law.

4. That apart, even on going through the merits of the case, we find that the Court below was correct in ordering interim maintenance at the rate of Rs.500/- per month, which requires no interference. It is seen that the appellant-husband and the respondent-wife got married on 19.3.1975. The Court below, on the basis of the evidence, both oral and documentary, found that admittedly, the appellant-husband had not maintained the respondent-wife after their separation and also had not adduced any reason for not maintaining the respondent-wife and accordingly, came to the conclusion that the appellant-husband, without proper reason, had not maintained the respondent-wife and also deserted her. Once the Court below comes to such conclusion, finding that the appellant-husband, after his retirement from the post of assistant in the E.S.I. Hospital, has been getting Rs.2,300/- per month as pension and that the respondent-wife has no means to maintain herself, the Court below ordered interim maintenance at the rate of Rs.500/- per month payable by the appellant-husband to the respondent-wife from the date of filing of the petition for maintenance till its disposal or till the life of the respondent-wife.

5. The said order of interim maintenance has been passed in the proceedings under Section 125 of the Code of Criminal Procedure and it is settled law that the assessment on evidence is inevitably subjective because we see the evidence with nobody's eyes, but our own. If the assessment of the lower Court is such that it cannot be reasonably sustained, the decision can and should be set aside on appeal. But, where it is not so, the appellate Court should be slow to interfere with concurrent factual inference merely because the eyes of the appellate Court are different, vide SONABALABORA v. JYOTIRINDRA BHATACHARAYA (2005 (4) SCC 501).

6. On going through the findings of the Court below, we do not see any reason to interfere with the same, for the simple reason that even assuming that the appellant-husband has got any grievance in the interim maintenance ordered by the Court below in a proceeding under Section 125 Cr.P.C., he is at liberty to work out his right in the manner provided under the Code of Criminal Procedure.

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In view of the above, the Civil Miscellaneous Appeal stands dismissed. Consequently, C.M.P.No.20240 of 2004 is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Judge,
Family Court, Coimbatore.

2. The Section Officer,
V.R.Section, High Court, Madras

1 cc To Mr.Palani Selvaraj, Advocate, SR.62457.

C.M.A.No.3788 of 2004

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